



THE STATE OF UTAH
OFFICE OF STATE ENGINEER
SALT LAKE CITY

File
WAYNE D. CRIDDLE
STATE ENGINEER

Frank Reese
W

August 24, 1961

Mr. Charles F. Hepworth
Water Commissioner
East Fork of the Virgin River
Orderville, Utah

Dear Mr. Hepworth:

This office has reviewed the McCarty Decree of 1900, the Burton Decree of 1925 and the memorandum of August 18, 1961 submitted by counsel for Orderville Irrigation Company and Mt. Carmel Irrigation Company regarding water rights on the East Fork of the Virgin River.

It is the opinion of this office that the court decree, in the case of St. George & Washington Canal Company vs. Hurricane Canal Company, dated December 12, 1925, adjudicates all the water rights, existing at that time, on the Virgin River and its tributaries.

The above entitled action was a general adjudication of water rights on the Virgin River tried by the court within the context of Chapter 67, Session Laws of Utah, 1919, which statute was the predecessor or our present adjudication statute Chapter 4, Title 73, U.C.A., 1953. It is the purpose of a general adjudication, as set out in the statutes and as has been interpreted by the Utah Supreme Court, to quiet title to the water of the particular drainage that is being adjudicated. Therefore, those water users who are using the waters of this system are limited in their use by the provisions contained in this decree and any modification thereof must necessarily be made by the district court having jurisdiction of this matter.

Further, we believe that any court decrees on this river or its tributaries, existing at the time of this general adjudication, are superseded by the decree of December 12, 1925, unless specifically included by the court. Certain of these old decrees were mentioned and confirmed by the court in this action, and therefore, are considered as part of the general determination. As to other decrees existing in this area and covering portions of this stream, which were subsequently covered by this general adjudication, we are of the opinion that the general determination must govern until it is modified.

Those irrigation companies or individuals in the Virgin River Decree which are awarded a water right with a specific priority date should realize that this is a facet of their right and it must be considered when distributing these waters. We believe this to be the case even though the decree makes a general proviso for distribution of classes of water. When the water diminishes to a point where there is not enough water to satisfy all rights we think we must then shut off rights priority-wise taking the priorities as they are set out in the decree. Any other administration can only be mutual agreement of all parties affected.

Since water distribution over past years, as indicated by the memorandum submitted by counsel may not have been in strict accordance with the governing decree, and since such administrations were apparently satisfactory to the water

users during years of better water supply conditions, it may be that a satisfactory agreement can be worked out for the future and the Burton Decree amended. However, this must be worked out between the users or through the courts.

You are therefore ordered to continue to follow the instructions sent you on August 3, 1961.

Yours very truly,

Wayne D Criddle

Wayne D. Criddle
STATE ENGINEER

DCN/wh

Copies to water users on East Fork of the Virgin River:

Lyle Chamberlain, Glendale, Utah
Rodney Carpenter, Kanab, Utah
David L. Foote, Orderville, Utah
Henry Carroll, Orderville, Utah
Glendale Irrigation Co, c/o Chas. C. Anderson, Pres., Glendale, Utah
Fred R. Major, 2802 Liberty Blvd, South Gate, California
Orderville Irrigation Co., Orderville, Utah
Mt. Carmel Irrigation Co., Mt. Carmel, Utah
Howard B. Spencer, Glendale, Utah
Merrill R. MacDonald, 206 No. Second East, Kanab, Utah
G. D. McDonald, Kanab, Utah
J. W. Morrison, P. O. Box 36, Mt. Carmel, Utah
Preston Bunting, Kanab, Utah

Copies To:

Earl Staker, P. O. Box 347, Cedar City, Utah
Mr. Ken Chamberlain, 76 South Main, Richfield, Utah